

Running head: IMPACT OF THE FAIR LABOR STANDARDS ACT

Executive Development

The Impact of the Wage and Overtime Provisions of the Fair Labor Standards Act on the

Prince George's County Fire and Emergency Medical Services Department

Andrew K. Pantelis

Prince George's County Fire and Emergency Medical Services Department

Bowie, Maryland

August 2007

Certification Statement

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writings of another.

Signed: _____
Andrew K. Pantelis

Abstract

The problem investigated was that the Prince George's County Fire and Emergency Medical Services Department may not have accurately calculated overtime wages as mandated by the Fair Labor Standards Act. The research purpose was to identify if the Department was calculating overtime in accordance with the provisions of the FLSA and to demonstrate the liability the Department was exposed to under this situation.

Evaluative research was used to answer questions about the proper method of calculating overtime, inclusive of required supplemental payments. Research was carried out through interviews, a literature and case law review, and an audit of payroll records. The results and subsequent recommendations illustrated the importance of annual payroll audits and training of managers to ensure FLSA compliance.

Table of Contents

Abstract.....	3
Table of Contents.....	4
Introduction.....	5
Background and Significance	7
Literature Review	11
Procedures.....	21
Results.....	26
Discussion.....	34
Recommendations.....	36
References.....	38

Appendices

Appendix A : Maximum Hours Standards for Work Periods From 7 to 28 Days.....	42
Appendix B : Statutory Provisions Governing Extra Compensation for Overtime.....	43
Appendix C : Coefficient Table for Computing Extra Half-Time for Overtime.....	45

The Impact of the Wage and Overtime Provisions of the Fair Labor Standards Act on the Prince George's County Fire & Emergency Medical Services Department

Introduction

The Fair Labor Standards Act (FLSA) was passed by Congress in 1938 to establish a minimum wage, overtime compensation standards, record keeping requirements, and other regulations that affect private employers and labor (Mathis & Jackson, 2005). The law created two broad categories of employees, those who are “exempt” from the regulation and those who are “non-exempt.” Under the law, employers are not required to pay overtime to exempt employees but must do so for non-exempt employees. In 1985, the United States Supreme Court mandated the application of the Act, and its overtime provisions in particular, to all state and local governments.

Administered and enforced by the Department of Labor's Wage and Hour Division, the FLSA is in an almost constant state of review, interpretation and amendment (Schleifer, 2006). Consequently, employers are continually confronted by a large number of difficult questions and problem areas. Institutions of government, particularly public safety agencies, have struggled with the often contradictory and sometimes incomprehensible rules that govern the Fair Labor Standards Act (Rukavina, 1999).

The Prince George's County Fire & Emergency Medical Services Department (PGFD) has not been an exception to this rule. During the last decade, the Department has struggled with its interpretation of the effect that the FLSA has on its workforce. Unlawful pay practices have resulted in litigation that has made it as far as the United States Court of Appeals (Lockwood v. Prince George's County, 2000). The fiscal impact

associated with legal fees, retroactive payments, and liquidated damages have cost the taxpayers millions of dollars.

This tendency does not appear to be unique to the PGFD. A report by the Administrative Office of the United States Courts (2007) indicates that number of federal lawsuits alleging violations of the Fair Labor Standards Act has quadrupled since the beginning of the millennium. Each year employers pay out hundreds of millions of dollars for violating the Act (Felton-O'Brien, 2007).

The research problem was that the Prince George's County Fire & Emergency Medical Services Department may not accurately calculate overtime wages as mandated by the Fair Labor Standards Act, resulting in improper compensation of their employees and exposure to liability. The purpose of this research is to identify if the Department is calculating overtime wages in accordance with the provisions of the FLSA and to identify the liability the department is exposed to under this situation.

The research questions that will be addressed during the course of this applied research project are as follows:

1. How is the PGFD currently calculating overtime wages?
2. Which PGFD supplemental incentives and payments must be included in the base hourly rate for calculating overtime due under the FLSA?
3. What is PGFD's liability for failure to abide by the provisions of the FLSA?

This applied research project will utilize evaluative research methods. The project will include the following:

1. A comprehensive literature review including labor law, pertinent case law, fire service trade journals, and human resource management books.

2. A statistical analysis of an accurate sample of payroll records
3. Oral interviews with fiscal affairs managers, labor lawyers, and subject matter experts.

Background and Significance

Prince George's County is located in the State of Maryland immediately adjacent to the District of Columbia. With a population approaching 900,000, the county is the wealthiest majority African-American jurisdiction in the nation (Bryant, 1999). Established in 1696, Prince George's County was formed from land in Calvert and Charles Counties by an act of the Maryland General Assembly on St. George's Day, April 23, 1696. The County was named for Prince George of Denmark, husband of Princess Anne, heir to the throne of England. In 1970, Prince George's County adopted a charter form of government comprised of an executive branch headed by a County Executive and a Legislative Branch consisting of an elected County Council (Bryant, 1999).

Prince George's County is home to a number of high profile facilities including the NASA Goddard Space Flight Center, Andrews Air Force Base, the United States Census Bureau, the University of Maryland, the National Harbor, Six Flags America, and the Washington Redskins FedEx Field. The aforementioned attractions contribute to the nearly one million visitors that Prince George's County receives each year (U.S. Census, 2005).

With the enactment of Charter Government came the creation of the Prince George's County Fire & Emergency Medical Services Department, under the command of a Fire Chief, appointed by the Executive, and confirmed by the County Council. The Charter unified 44 independent volunteer fire corporations under the authority of a central

County department. Additionally, the first career fire fighter positions in the history of Prince George's County were established at that time.

Today, the Prince George's County Fire & EMS Department (PGFD) is one of the busiest combination career and volunteer systems in the nation, responding to over 130,000 calls for service each year. The Department is currently comprised of a combination of approximately 1500 career uniformed personnel and volunteers staffing 44 community based fire and rescue stations. The operating budget for the Department is 112 million dollars, which includes fringe benefit packages for both career and volunteer members. The Department is responsible for all fire suppression activities, both Advanced Life Support and Basic Life Support delivery systems, hazardous materials mitigation, and fire prevention and investigations.

As an employer, Prince George's County is required to abide by all federal, state, and local laws that govern labor. To protect workers from substandard wages and oppressive working hours, the United States Congress enacted the Fair Labor Standards Act (FLSA) in 1938 and mandated a nationwide minimum income (Seyfarth-Shaw, 2004). In addition, the Act represented a broad economic and social policy to maximize employment by imposing a sanction on excessive work hours. Congress hoped that the deterrent of paying time-and-one-half overtime would encourage employers to spread jobs among a greater number of workers. Thus, the FLSA was designed to give specific minimum protections to individual workers and to ensure that each employee covered by the Act would be protected from excessive work hours and underpayment for services (Aitchison, 2005a).

The FLSA establishes the minimum standards that employers must meet in order to avoid labor conditions that are detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general wellbeing of workers (Aitchison, 2005b). Additional rights may be established by state law or through collective bargaining. Since nothing prohibits the payment of wages higher than the statutory minimum wage, nor does it prohibit overtime from being paid sooner or in amounts greater than required by the FLSA, many employees covered by collective bargaining agreements find that their wages and benefits often surpass the requirements that are established by the FLSA (Berlin, 2006).

The Government of Prince George's County and the International Association of Fire Fighters, Local 1619 have adopted a Collective Bargaining Agreement that outlines wages, benefits, and work schedule for firefighters, paramedics, and civilian employees of the Department. Prince George's County Fire Fighters and cross-trained Fire Fighter-Paramedics currently work either a 24/72 shift schedule or a schedule of five consecutive eight hour days. Shift employees work one 72 hour pay period immediately followed by a 96 hour pay period or reversed per pay cycle. The aforementioned employees are classified as non-exempt for the purposes of calculating overtime and are entitled to a special work schedule exemption as outlined in the FLSA.

Per the Collective Bargaining Agreement (2006), any hours worked beyond an employee's scheduled work hours are calculated at one and one half times the employee's base hourly rate of pay. This calculation is irrespective of if the employee actually worked their total scheduled hours, or if they utilized some form of paid leave for a portion of the applicable pay period. However, if an employee works over 106

hours, without utilizing any form of paid leave, the hourly overtime rate of pay is calculated at one and one half times the employee's base hourly rate of pay inclusive of other remuneration such as certification payments and holiday premiums, as outlined in the requirements established by the FLSA.

Historically, Prince George's County has struggled with interpretation the FLSA as it pertains toward its employees. Fire & EMS Department employees pose a particular challenge due to a number of unique contractual incentives of which they are entitled. As a result, the County has faced costly litigation in which they were found guilty of violating of labor law and were forced to pay significant reparations and damages (Lockwood v. Prince George's County, 2000). As more employees become aware of their rights under the FLSA, the Department's liability is likely to increase on an exponential level.

An objective of the *Executive Development* course presented at the National Fire Academy is to emphasize the importance of organizational culture. In 1959, psychologist Frederick Herzberg constructed a two-dimensional paradigm of factors affecting people's attitudes about work. He concluded that factors such as company policy, supervision, interpersonal relations, working conditions, and salary are hygiene factors and that the absence of hygiene factors can create job dissatisfaction (Herzberg, Mausner, & Snyderman, 1959). The subject matter that is presented in this Applied Research Project relates directly to employee salaries which have a direct impact on organizational culture.

This applied research project also relates to the United States Fire Administration's objective of responding appropriately in a timely manner to emerging fire service issues (NFA, 2005). The FLSA encompasses a number of unique

components that apply exclusively to the fire service and are under constant review. The fluctuating rules and regulations that govern the payment of fire department employees warrant regular scholarly research on the subject.

Literature Review

The purpose of this literature review is to summarize the findings of other researchers in three areas that are central to the questions posed in this Applied Research Project. First, the mandatory overtime provisions of the FLSA are discussed within the context of their application to public sector employees. Second, the proper method for calculating overtime due under the FLSA will be evaluated. Finally, the penalties that have been imposed against employers for violating the wage and overtime provisions of the FLSA will be discussed in detail.

Overtime Provisions

When Congress passed the FLSA in 1938, it did not apply either to employees of private transit companies or to employees of state and local governments (Lee, 1996). In handing down *Garcia v. San Antonio Metropolitan Transit Authority* (1985), the U.S. Supreme Court held that the FLSA and its overtime provisions in particular, apply to state and local government employers (Rukavina, 1999).

The Garcia case rejected the original argument that the commerce clause prohibited Congress from legislating local functions that were traditional, integral, or necessary to the operation of local or state governments. Justice Blackmun concluded by asserting that our political system inherently protects the states, and so the court was not required to articulate definitive limits (Lee, 1996). Instead states can rely on the “built-in restraints that our system provides through state participation in federal governmental

action. The political process ensures that laws that unduly burden the states will not be promulgated” (Garcia v. San Antonio Metropolitan Transit Authority, 1985).

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work. Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay (Overtime Compensation, 2004, § 778.200).

Murphy and Waterfill (2006) explain that the regular rate of pay is the average rate of pay that the employee received during the period. For example, if an employee worked multiple jobs in a pay period in which each was paid at a different rate, any overtime hours must be paid at the weighted average rate. The average rate must also take into account certain additional payments to employees. Items that generally count towards the regular rate are shift premiums and non-discretionary bonuses (Aitchison, 2005a).

Employers must treat all employees as non-exempt unless they fit within one of the FLSA’s narrow exempt categories. Significant changes were made to the FLSA for the executive, management, professional, and administrative exemptions in August 2004. Some of the changes updated the criteria for overtime eligibility based on how much money someone makes, whether they are paid a regular salary, regardless of number of hours worked, and the nature of the work the employee performs (Rukavina, 2004).

In *Barrentine v. Arkansas-Best Freight System* (1981), the United States Court of Appeals for the Fourth Circuit held that the overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day

or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked (Overtime Compensation, 2004, § 778.316).

In 1986 the U.S. Congress, recognizing that most communities could not absorb the fiscal burden of paying fire service employees extensive amounts of overtime, amended the FLSA to include certain exemptions (Thrower, 2003). Public agencies that provide fire prevention, protection, and suppression were permitted to implement special 7(k) work periods for sworn firefighters, which can increase the FLSA overtime threshold beyond the normal 40 hour week. The term 7(k) refers to the section of the FLSA in which these special rules are contained, 29 U.S.C. §207(k). Firefighters covered by these special work periods are entitled to FLSA overtime only for hours worked in excess of the threshold established by the Department of Labor (Berlin, 2006).

For employees engaged in fire protection activities a threshold of 212 hours in a work period of 28 days; 53 hours in a work period of seven days; or in the case of any work period between seven and 28 days, a proportionate number of hours in the work period are permitted (Appendix A). According to Aitchison (2005b), most fire fighters who work platoon schedules will be classified by their employers as 7(k) eligible and compensated accordingly.

The special work periods and overtime rules are available only for employees who meet the statutory definition of employees in fire protection activities (Krakeel, 1999). Thus, to qualify for section 7(k) pay as a fire protection employee under this

statutory definition, an employee must work for a government fire department, be trained in fire suppression, have the legal authority to fight fires, have the responsibility to fight fires, and must either actually engage in fire suppression work of the type defined or non-fire related emergency responses (*Fact Sheet # 8*, n.d.).

For FLSA purposes, hours of work include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer (Aitchison, 2005a). Under certain specified conditions, time spent sleeping and eating may be excluded from compensable time. These are the only hours which must be included when determining if FLSA overtime is due. FLSA overtime is due only when and to the extent that FLSA hours worked exceed the applicable FLSA overtime threshold; 40 hours per week or the applicable chart hours that are established for a 7(k) work period (Rukavina, 1999).

In summary, the literature reviewed in relation to the overtime provisions of the FLSA confirms that there are a number of unique segments that apply exclusively to the fire service. The research literature highlights the fact that the FLSA governs public sector employees and that local, state, and federal governments must adhere to its provisions. Furthermore, the material described special work hour exemptions that govern exactly when employees engaged in fire protection activities are eligible to receive overtime.

Method of Calculating Overtime

According to Pollack (2001), it is common knowledge that the FLSA requires employers to pay one and one-half times an employee's regular rate for all work

performed in excess of 40 hours per week. However, employers often overlook the proper method for determining this regular rate. The regular rate is determined by dividing the employee's total remuneration, except for statutory exclusions, in any workweek by the total number of hours actually worked during the workweek (Murphy & Waterfill, 2006).

The regular rate of pay may be different from the basic hourly rate. For example, some employees may be eligible for nondiscretionary premiums payments such as shift differential, weekend differential, or on-call pay (Pollack, 2001). In such cases, the regular rate for the purpose of calculating overtime will be more than the basic hourly rate. The regular rate is found by totaling all of the sums received by the employee in the workweek and dividing by the total hours actually worked (Berlin, 2006). The employee is then entitled to extra half time pay at this rate for all hours actually worked over 40 hours in the workweek.

Employees may be paid, and earnings may be computed on a salary, commission or any other basis. However, any overtime pay due must be computed as if the employee were paid hourly. Furthermore, the regular rate must be determined for each particular workweek, even if the employee is paid less frequently than weekly.

The FLSA specifically excludes eight categories of compensation from an employee's regular rate. Aitchison (2005a) explains that understanding the exclusions is critical because the employer must include any remuneration that does not fit within one of these exceptions in the total compensation when determining the regular rate. Permissible exclusions include contributions to certain employee benefit plans, payment for hours not worked such as vacation pay, holiday pay, sick-leave pay or similar

payments, expense reimbursements, employer gifts made at Christmas or on other special occasions, purely discretionary bonuses, certain employer provided stock options, and talent fees. In addition, if an employer pays an extra hourly premium that equals or exceeds the time and one-half rate for working on a particular holiday or day of the week, the employer may exclude that premium (Appendix B).

According to Berlin (2006), the exemption that employers struggle with the most is the one that pertains to discretionary gifts and bonuses. To qualify for a discretionary payment exclusion, the payment must actually be a gift or in the nature of a gift (Pollack, 2001). If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered discretionary (Murphy & Waterfill, 2006). Furthermore, if the employee has a legal right to the bonus because it is paid pursuant to an employee contract, it must be included in the regular rate (Overtime Compensation, 2004, §778.200).

The legal difference between discretionary and nondiscretionary payments is not always obvious. If the employer is not certain, then legally it is most likely nondiscretionary in nature. Generally, payments that must be included in the computation of the regular rate are pay differentials, production bonuses, attendance bonuses, cost of living bonuses and other nondiscretionary bonuses. Similarly, on-call pay, meals, and lodging and similar facilities provided primarily for the employer's benefit and convenience must also be included in the regular rate computation (Mathis & Jackson, 2005).

Typically, such payments are distributed on a monthly, quarterly or annual basis. If the bonus payment is covered by the overtime rules, payment of the bonus after the

period during which some or all of it was earned does not eliminate the overtime obligation (Pollack, 2001). Instead, when the bonus is paid, the employer must retroactively pay any additional overtime due because of the resulting increase to the employee's regular rate.

The courts have established helpful precedent that describes some of the additional payments that must be included when calculating the regular rate. It is clearly stated by *Interstate Brands v. Reich* (1995) that the statutory exemptions were not designed to exclude every payment that is not measured by the number of hours spent at work. *Acton v. City of Columbia* (2006) establishes that sick leave buy-back monies must be included in an employee's regular rate of pay. Other supplemental payments such as longevity pay, educational incentive pay, and senior officer pay must also be added to the salary calculation (*Wheeler v. Hampton Township*, 2005). Furthermore, *Featsent v. City of Youngstown* (1993) found that special assignment pay and hazardous duty pay shall be computed into the regular rate of pay.

In summary, the literature review depicts the method in that employers must utilize to calculate overtime wages. The regular rate of pay for the purpose of calculating overtime is clearly defined as all remuneration paid to the employee. Furthermore, the literature review supports the fact that with the exception of a select number of statutory exemptions, all premiums, incentives, and non-discretionary bonuses must be included in the regular rate of pay.

Employer Liability for Failure to Abide by the FLSA

According to Rank (2005), the single largest area of potential liability for employers stems from violations of the FLSA. With an increase in employee awareness,

understanding the basic guidelines of the FLSA is more important now than ever. Martin (2007) asserts that an employer who fails to comply should be concerned about becoming the next FLSA statistic. She provides a staggering figure in that the monetary value of just the top ten private plaintiff settlements in wage and hour cases for 2006 alone totaled \$513.9 million. Given the high price that organizations pay for noncompliance, it's easy to see why "FLSA cases have earned a reputation as company-killers" (Rank, 2005).

The FLSA is enforced by investigators from the Department of Labor's Wage and Hour Division. A variety of methods are available for the Department to enforce compliance with the Act's requirements. When investigators encounter violations, they recommend changes in employment practices in order to bring the employer into compliance and mandate the payment of any back wages due employees (Schleifer, 2007).

Once an investigation is launched, the Wage and Hour Division often does not solely confine itself to the specific complaint that may have been made. Instead, it checks to determine whether there has been compliance with all aspects of the FLSA for all current and former employees who have been on the payroll for the past two years (Rank, 2005). In many cases, investigators discover additional violations of the act which can exponentially increase the legal and fiscal impact.

Willful violations may be prosecuted criminally and the violators fined up to \$10,000. A second conviction for a willful violation may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalties of up to \$1,000 per violation. When a civil money penalty is assessed, employers have the right, within 15 days of receipt of the

notice of such penalty, to file an exception to the determination. When an exception is filed, it is referred to an administrative law judge for a hearing and determination as to the appropriateness of the penalty. If an exception is not filed, the penalty becomes final (Fact Sheet # 62U, 2006). The Secretary of Labor may also bring suit for back pay and an equal amount in liquidated damages and obtain injunctions to restrain an employer from violating the Act. Furthermore, the Wage and Hour Division may also seek a federal injunction to restrain an organization from committing future violations (Seyfarth-Shaw, 2004).

Formal Department of Labor investigations are not the only way that wage and hour claims arise. With increasing frequency, many current and former employees hire private lawyers to press their claims for alleged minimum wage and overtime violations (Goff, 2006). These individuals may be entitled to recover double the unpaid wages for up to three years. In those cases, the courts usually require the employer to pay the employees legal fees, which often may be more exorbitant than the back wages awarded.

The garden variety wage and hour claim that is filed by a single employee may not be of great economical concern to an employer. However, according to Martin (2007), the FLSA allows for a type of class action, called a collective action which permits the aggregation of several thousand claims at once, as long as the employees are “similarly situated.” There has been a surge in class and collective actions against employers by workers alleging unpaid wages and overtime. These types of cases can involve the claims of thousands of current or former employees, and the potential liability that an employer can face is staggering (Schleifer, 2006). Furthermore, there is no requirement that any investigation or notice be provided to the employer before the suit is

filed (Felton-O'Brien, 2007). In many cases, the first time the employer learns of the claim is when the lawsuit is served.

FLSA cases are easier to prove than other general types of class action cases because they address a systemic issue that applies across the board to all employees (Martin, 2007). To make matters even more complicated, plaintiffs do not need to show intent, but just that the company did not make sufficient effort to ensure it was following the law.

To help defend against FLSA challenges and the growing threat of litigation, it is crucial that employers take proactive and preventative actions. The best precaution is to conduct an internal wage and hour audit of wage payment practices and job classifications for overtime purposes. The resources required to conduct an audit will pale in comparison to the costs of becoming embroiled in litigation (Krakeel, 1999). Self audits performed internally by the employer or through an outside consultant are important to address potential noncompliance with the Act. If an employer decides to self-audit, it is crucial to implement solutions and remedy problems revealed by the audit because the results of self-audits may be “discovered” by adversaries in litigation and used against the employer (Goff, 2006).

The “safe harbor” provisions of the DOL rules will provide the diligent employer an opportunity to correct slight violations of the FLSA and avoid legal trouble. Under the safe harbor stipulation, if an employer has a clearly communicated policy prohibiting improper deductions, ensures a complaint mechanism, reimburses employees for any improper deductions, and makes a good-faith commitment to comply in the future, the

employer will not lose its exemption status for any employee unless the employer willfully violates the FLSA by continuing the improper practice (Martin, 2007).

Another important preventative tool that an employer can implement is to train their managers to have an understanding of their obligations regarding timekeeping and other FLSA requirements (Schleifer, 2006). It is necessary to take a proactive approach, review employment-related policies and consult counsel and other experts to show that at least a good-faith effort was made to comply with wage and hour regulations.

In summary, the literature review illustrated the substantial liability to employers for failure to abide by the provisions of the FLSA. The importance of the proper classification of employees cannot be overemphasized. Extensive amounts of literature demonstrate that employers who misclassify employees risk liability for back pay, attorneys' fees, and liquidated damages. Furthermore, employers may be held criminally liable for egregious violations of the Act.

Procedures

This applied research paper utilized the evaluative method of research to determine if the pay practices of the PGFD were consistent with the law. The evaluative methodology focused on analyzing a specific practice and comparing it to an established set of standards. The procedures that were utilized to complete this research project consisted of six central steps.

The first component of the research process commenced with a comprehensive literature examination at the University of Maryland student library in College Park, Maryland. These efforts included reviews of books, journals, reports, and other written materials, as well as a number of Internet searches. The objective of this literature review

was to establish a basic foundation for the conduct of research and to obtain original documents that were necessary to perform a proper evaluation of the subject matter.

The second step comprised a detailed examination of existing U.S. legislation and case law in order to identify the correct method for calculating overtime due to employees. This included reviewing the *Fair Labor Standards Act* (2004), the U.S. Department of Labor's wage and overtime provisions, and a multitude of United States Supreme Court and Appellate Court labor rulings. The researcher utilized this evaluation to establish a benchmark for the proper method of calculating wages as outlined by the regulatory requirements.

The third procedure consisted of a detailed forensic examination of a sample of employee payroll records. To accomplish this task, two separate pay periods were selected for evaluation. The pay periods ending on June 23, 2007 and July 7, 2007 were selected due to the high number of employees that earned FLSA overtime during the respective pay periods. The PGFD Office of Fiscal Affairs provided the total number of employees that earned FLSA overtime on the aforementioned dates. These figures were used as the total sample figure.

After establishing the sample, an email was distributed to all PGFD employees requesting that any employee who earned FLSA overtime on the above referenced dates, submit a copy of their payroll record for an evaluation. All returned records were carefully analyzed to determine the method that PGFD utilized to calculate the overtime payments.

The Office of Fiscal Affairs indicated that a total of 90 employees ($n = 90$) earned FLSA overtime during the pay period ending June 23, 2007 and 137 employees

($n = 137$) earned FLSA overtime during the pay period ending July 7, 2007 (N. Terraciano, personal communication, July 15, 2007). A total of 195 employees responded to the email request for payroll records and voluntarily submitted the documents for review.

The fourth component of research included a combination of a document review of the Collective Bargaining Agreement between Prince George's County and the International Association of Fire Fighters, Local 1619 and an unstructured Interview with Labor Attorney Jeffrey Gibbs from the Washington, D.C. law firm of Bredhoff and Kaiser. The objective of the document review was to determine the monetary bonuses, premiums, and incentives that PGFD employees received in addition to their regular salary. The objective of the interview with Mr. Gibbs was to document the history and application of the aforementioned supplemental payments. Mr. Gibbs has negotiated labor agreements between the affected parties for over twenty years. His knowledge and experience provided a well rounded legal and historical perspective for the author's research.

The fifth stage of research comprised of a detailed case law review. Original legal materials were retrieved and evaluated from the Academic Legal Database LexisNexis. This source was selected to ensure that cases were selected that reflect the current status of the legal authority cited to avoid relying on a case that has been overturned on appeal or on legislation that has been amended or repealed. The objective of the case law review was to determine PGFD's liability for failure to abide by the provisions of the FLSA.

The final research step consisted of an unstructured telephone interview with John Rukavina, Director of Public Safety for Wake County, North Carolina. Mr. Rukavina is an EFO graduate and an attorney who writes extensively on FLSA issues that affect the fire service. The interview was completed by the author in the final stages of research to assist with asking meaningful questions based on the study of issues relevant to the problem and related research question. Furthermore, the interview served as a tool to confirm the results of the preceding research procedures and to provide a global perspective on the impact that the FLSA has on the fire service.

Limitations & Assumptions

As with all research, there are limitations to the interpretation of the results and additional considerations that need to be taken into account when trying to generalize this analysis to broader issues related to the FLSA. During the course of this research, the author encountered several limitations that are worthy of mention.

The subject matter includes material, such as case law, that spans over a historical period of several decades. As a result, retrieving recent scholarly material presented itself to be a challenge. The author was required to utilize various references that were several years old due to the fact that they contained established precedent which has never been subject to amendment.

In addition, many of the issues currently affecting PGFD have not been tested in a court of law. Although, significant precedent-setting case law exists, the researcher is not a licensed attorney or justice of the court and can not attest to how the issues would be interpreted in litigation. This research supports the conclusion that the FLSA is subject to legal challenge and interpretation in the future as it has been in the past.

This researcher also found that most employees in the Human Resources Division and the Payroll Office were either unwilling or unable to provide information regarding the PGFD method for calculating overtime. This required the researcher to rely solely on voluntary employee payroll records for observation and analysis.

The results of this study are based on specific findings that are unique to the PGFD. The conclusions drawn from this evaluation cannot be assumed to apply on a blanket level against FLSA issues affecting other jurisdictions. Each department has their own various intricacies, and as this research has revealed, the smallest details will determine the proper application of the FLSA. Any attempt to replicate this research must be undertaken with caution.

Definition of Terms

Collective Bargaining Agreement - a labor contract between an employer and a union that outlines the wages, hours of work, working conditions, grievance procedures, and other terms and conditions of employment.

Discovery - the compulsory disclosure of pertinent facts or documents to the opposing party in a civil action, usually before a trial begins.

Exempt Employee – an employee who by statute is not subject to the provisions of the Fair Labor Standards Act.

Hazardous Duty Pay - additional pay for performing hazardous duty or work involving physical hardship. Work duty that causes extreme physical discomfort and distress which is not adequately alleviated by protective devices is deemed to impose a physical hardship.

LexisNexis - online database published by Reed Elsevier. LEXIS publishing is for the legal profession and the NEXIS unit serves the business, government and academic markets. The system is divided into Libraries, which contain related documents, and Files within the libraries. For the legal researcher, LexisNexis is heavily used for American case reports, legislation, International law, Canadian law, and Law Journals and newspapers.

Liquidated Damages - the amount of money specified in a contract to be awarded in the event that the agreement is violated.

Payroll Period – the frequency at which wages are usually paid. The most common frequencies are weekly, biweekly, semi-monthly, and monthly.

Regular Rate of Pay – this term is the basis for all overtime pay. “The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment, except statutory exclusions, in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid.

Total Remuneration – all payments for employment paid to, or on behalf of, the employee except for payments specifically excluded by the Act.

Results

Research Question 1. How is the PGFD currently calculating overtime wages?

This question posed the greatest challenge to the researcher. Several verbal, written, and electronic inquiries were made to various Prince George’s County officials in an attempt to answer this question. During the six month research period, all surveyed officials were either unable or unwilling to provide the requested information. Therefore, it was necessary to conduct an audit of payroll records.

The Office of Fiscal Affairs indicated that a total of 90 employees ($n = 90$) earned FLSA overtime during the pay period ending June 23, 2007 and 137 employees ($n = 137$) earned FLSA overtime during the pay period ending July 7, 2007 (N. Terraciano, personal communication, July 15, 2007). A total of 195 employees responded to the email request for payroll records and voluntarily submitted the documents for review.

For the June 23rd pay date, 75 documents ($s = 75$) were reviewed for pay methodology. According to the Applied Research Self-Study Guide (2005), the number needed to assure a 95 percent confidence level in a randomly chosen sample is defined as 73 documents. This document review consisted of 2 records above the required figure; therefore it may be considered a valid sample.

For the July 7th pay date, 120 documents ($s = 120$) were reviewed for pay methodology. The Applied Research Guide (2005) was again referenced, and the number required to ensure a 95 percent confidence level in a randomly chosen sample is defined as 103 documents. This document review consisted of 17 records above the required figure; therefore it may also be considered a valid sample.

As outlined in the literature review, employees engaged in fire protection activities are not entitled to overtime under the FLSA until they reach the statutory work hour threshold of 212 hours in a 28 day work cycle. However, PGFD utilizes a work period of 14 days and therefore employees are eligible for FLSA overtime after a work hour threshold of 106 hours (N. Terraciano, personal communication, March 28, 2007). Paramedics and civilian employees do not qualify for the fire protection work exemption and are eligible for FLSA overtime after 40 hours in a 7 day work cycle.

According to the Collective Bargaining Agreement (2006), all PGFD employees, regardless of exemption status, are eligible to earn one and one half times their base hourly rate of pay for any hours worked outside of their regular work schedule. Any hours worked prior to the 106 hour threshold are classified as gap time by the FLSA. Gap time payments must only abide by the contractual provision of paying time and a half overtime for excess work hours and do not have to follow the FLSA guidelines of including all remuneration, such as bonuses, premiums, and incentives, in the overtime rate. It is only after the employee works over 106 hours that supplemental payments must be included in the overtime rate. All of the 75 payroll records from June and 120 payroll records from July that were evaluated, properly differentiated between gap time overtime hours and FLSA overtime hours.

The payroll records were further evaluated to determine the method that that PGFD utilized to determine each employee's FLSA overtime rate. Each payroll record was individually compared against the Department of Labor Guide to Calculating Overtime (Appendix C). Upon completion of the manual calculations, each payroll record was entered into the automated FLSA Overtime Calculator Advisor (n.d.) found on the Department of Labor's website for additional verification. The manual calculation of overtime and the subsequent automated calculation corresponded correctly for all payroll records that were reviewed.

The evaluation of records for the pay period ending on June 23, 2007 revealed that all 75 payroll records were calculated consistently. The FLSA overtime rate was established at one and one half times each employee's base rate of pay, inclusive of a \$125.00 Training Certification payment.

The evaluation of records for the pay period ending on July 7, 2007 revealed that all 120 payroll records were factored consistently as well. The FLSA overtime rate was established at one and one half times each employee's base rate of pay, inclusive of a \$125.00 Training Certification payment and a 24 hour Holiday Premium for any employee who worked on Independence Day.

Research Question 2. Which PGFD supplemental incentives and payments must be included in the base hourly rate for calculating overtime due under the FLSA?

The document review of the Collective Bargaining Agreement (2006) revealed that PGFD employees are eligible to receive a total of five various wage augmentations. A Training Certification payment and a Holiday Premium payment (if applicable) are earned in each respective pay period and a Clothing Allowance, a Physical Training Supplement, and Special Duty Pay are distributed in a lump sum payment during the first full pay period in July. All of the aforementioned payments were tested against the narrow exclusions listed in Section 207(e) of the FLSA to determine if they must be included in the base hourly rate for the purposes of calculating overtime.

The literature review revealed that under the provisions of section 7(e) of the FLSA, all remuneration for employment must be included in calculating the regular rate of pay on which overtime compensation is paid except for eight specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans, and payments made by the employer pursuant to certain profit-sharing, thrift, and savings plans.

Training Certification Pay

Training Certification Pay is a non-discretionary payment because both the fact that payment is to be made and the amount of the payment is mandated by the Collective Bargaining Agreement (Overtime Compensation, 2004, § 778.200 ¶3). According to a Department of Labor Wage and Hour Division Opinion Letter (2005), the statutory exemptions do not provide exclusions for guaranteed training or educational incentives. Therefore training and education incentive pay must be included in the regular rate of pay for calculating overtime compensation.

Holiday Premium

The Holiday premium is a non-discretionary payment because both the fact that payment is to be made and the amount of the payment is mandated by the Collective Bargaining Agreement (Overtime Compensation, 2004, § 778.200, ¶3). Furthermore, the Holiday premium is less than one and one-half times the rate established in good faith for like work performed in non-overtime hours so it does not meet the statutory exemption. Consequently, the Holiday Premium must be included in the regular rate of pay for calculating overtime compensation.

Clothing Allowance & Physical Training Supplement

The Clothing Allowance and Physical Training Supplements may also be classified as non-discretionary payments because both the fact that payment is to be made and the amount of the payment is mandated by the Collective Bargaining Agreement (Overtime Compensation, 2004, § 778.200, ¶3). The Clothing Allowance & Physical Training Supplements are not true reimbursements but rather are bonuses veiled under the aforementioned titles. These payments have existed in the Collective Bargaining Agreement for over a decade and were labeled in an attempt to “veil” supplemental

payments from other bargaining units in Prince George's County (J. Gibbs, personal communication, April 18, 2007).

Prince George's County does not have a recognized uniform reimbursement policy or procedure. Employees are furnished with all uniforms, equipment, and safety gear that are required to perform their duties. Furthermore, all uniform and equipment alterations are provided by the employer. For the employer to qualify for the statutory exemption the clothing allowance must be in the form of a true reimbursement and it must "approximate the actual cost of purchase and cleaning" (J. Rukavina, personal communication, July 15, 2007). Since the Clothing Allowance does not meet the aforementioned guidelines, it must be included in the regular rate of pay for calculating overtime compensation.

Prince George's County also does not currently have a recognized physical fitness or training program. The Physical Training supplement is not contingent upon the employee meeting and maintaining any fitness benchmarks or standards. In light of these facts, the Physical Training supplement must be considered a non-discretionary payment and must also be included in the regular rate of pay for calculating overtime compensation.

Special Duty Pay

Special Duty Pay is a non-discretionary payment because both the fact that payment is to be made and the amount of the payment is mandated by the Collective Bargaining Agreement (Overtime Compensation, 2004, § 778.200, ¶3). The Act requires the inclusion in the regular rate of such extra premiums as nightshift differentials and premiums paid for hazardous, arduous or dirty work. Special Duty Pay is awarded to

employees that perform extra hazardous duty or perform work above and beyond normal duties as a Field Training Officer (FTO). As a result, Special Duty Pay does not meet the statutory exemption and must also be included in the regular rate of pay for calculating overtime compensation.

The payroll record audit that was utilized to answer the first research question identified that Prince George's County is including the Training Certification Payment and the Holiday Premium in the regular rate of pay for calculating overtime payment. However, this research has revealed that Prince George's County must also include the Clothing Allowance, Physical Training Supplement, and Special Duty Payment in the regular rate in order to be in compliance with the law.

Research Question 3. What is PGFD's liability for failure to abide by the provisions of the FLSA?

The Literature review of case law revealed that FLSA actions can threaten public sector employers with high exposure because the regular damages awarded can be substantial. An employer who mistakenly pays its employees improperly under the FLSA must pay appropriate back pay. The back award can apply to a whole class of employees, can constitute a substantial fraction of their wages, and can extend back several years. The statute of limitations for an FLSA action is two years, extended to three if the employer's violation is willful. A violation is willful if an employer knew or showed reckless disregard as to whether its conduct was prohibited. An employer will also have to provide back pay for the time during which the lawsuit was pending, unless the employer changed its practices during that time. If a whole class of employees is part of the lawsuit, the back pay liability can add up quickly.

Several of the court cases revealed that the FLSA requires an employer to pay liquidated damages, typically in an amount equal to the back pay owed. The employer must pay such liquidated damages unless it can show it acted in “good faith.” To make this showing, the employer must prove that it had an honest intention to ascertain and follow the requirements of the FLSA and that it had reasonable grounds for believing its conduct complied with the Act. Even an employer’s making this good faith showing does not exempt the employer from liquidated damages, rather, it affords the Court discretion to eliminate or reduce the liquidated damages.

Prevailing plaintiffs are also entitled to an award of reasonable attorneys’ fees and court costs. This award could constitute a substantial additional liability for employers. Plaintiffs’ legal rates in wage and hour cases are often high and the hours spent by counsel can be extensive. Collective actions can last a number of years and require both sides to engage in a fact-intensive discovery and motion practice. Moreover, the award of attorney fees, even if “reasonable” for purposes of applicable law, would not actually constitute a fee amount supported by the market. Instead, it would constitute in effect another substantial liability to be borne by the employer.

Not only are FLSA lawsuits attractive to employees because of the potential damages, but an employee also has a longer time period to file an FLSA claim than other employment claims. The FLSA allows for a three year statute of limitations and violations can occur each time employees receive their paychecks. As a result the statute of limitations begins anew each time employees are paid incorrectly.

Discussion

Prior to this study, there had been little analysis by the PGFD of the wage and overtime provisions of the FLSA, despite the potential liability for failure to comply with such requirements. The results of this study confirmed that the PGFD is not calculating overtime in accordance with FLSA guidelines. The Collective Bargaining Agreement (2006) provides for a number of premium payments in addition to the basic annual wages, several of which have not been accurately factored into the hourly rate for the purpose of calculating overtime.

The responses from the internal stakeholders who participated in this research indicated that there is a general lack of understanding regarding the method of calculating overtime due under the FLSA. In addition, the interviews revealed that the Fire Department has not made an effort to provide FLSA training to their Human Resource or Fiscal Affairs employees in nearly twenty years. The Department has relied on occasional interpretations from the Prince George's County Office of Law. However, not having a labor attorney on staff, the Office of Law is ill prepared to render such advice.

With respect to FLSA compliance, technological advances have been both a blessing and a curse. During the early 1980s and 1990s, Prince George's County embraced computer-based systems that allow them to process huge payrolls involving thousands of employees in minutes rather than days or weeks. As with any computer-based system, the accuracy of a payroll is contingent on the quality of the input data and the use of appropriate computations. Unfortunately, Prince George's County has relied on the hope that system developers have designed their products in full compliance with

applicable federal and state law and may find that their faith in these products has been misplaced.

While the available payroll analysis shows that the overtime rate has been miscalculated, they provide little insight into the total fiscal impact, which is likely to be significant. It is clear that further research needs to be undertaken in this area, and that a complete payroll audit would be necessary in this regard. However, the audited payroll records were able to produce quantitative data that demonstrated exactly how Prince George's County was calculating overtime. This audit can be used as a template for the purposes of conducting a comprehensive payroll analysis to identify any additional violations of the FLSA.

The results of this study illustrate that employers who violate the FLSA automatically are subject to double damages, unpaid wages plus an equal amount in liquidated damages, unless they can prove they acted in good faith and reasonably believed they were complying with the law. Monetary damages also extend forward until an employer corrects an FLSA violation; in other words, monetary damages may continue to increase even as an FLSA lawsuit is litigated.

An internal wage and hour audit is an essential preventative tool for employers. Not only can internal wage and hour audits reduce the risk of FLSA lawsuits and hefty damage payments, but they also help to navigate the FLSA and its regulations. An annual wage and hour audit should be at the top of every employer's "to do" list. Upon conclusion of an FLSA audit, Prince George's County will need to correct pay practices that violate the FLSA and subsequently pay the affected employees any back wages that are owed.

Historically, Prince George's County has struggled with interpretation the FLSA as it pertains toward its employees. Fire & EMS Department employees pose a particular challenge due to a number of unique contractual incentives of which they are entitled. As a result, the County has faced costly litigation in which they were found guilty of violating of labor law and were forced to pay significant reparations and damages (Lockwood v. Prince George's County, 2000). As more employees become aware of their rights under the FLSA, the Department's liability is likely to increase on an exponential level.

Recommendations

Based upon the results of this study, it is evident that the PGFD is not accurately calculating overtime wages in the correct manner. Areas needing improvement have been identified and a strategic plan should be established to address the areas that need corrective action. Summarized below are recommendations for adhering to and maintaining compliance with the FLSA, thus ensuring that employees receive proper compensation and reducing the Department's exposure to liability.

Prince George's County should immediately provide FLSA compliance training to all human resources, fiscal affairs, and payroll employees. Training should be delivered by an independent licensed firm that specializes in all aspects of the FLSA and labor law. Navigating the finer points of wage and hour law can lead to a quagmire of misunderstandings, missed information, and misinterpretation of critical laws, regulations, and amendments. Even seasoned human resources and payroll professionals can easily make such errors. An employer's compliance efforts, or lack thereof, can directly impact its potential liability for both an expanded statute of limitations and the

availability of liquidated damages. Both types of expanded liability, which can significantly boost an employer's legal costs, can be leveled at employers that commit willful violations of the FLSA. A comprehensive training program would not only identify violations of the Act, it would demonstrate a significant effort to maintain compliance.

It is also recommended that the PGFD conduct a comprehensive internal wage and hour audit. An internal wage and hour audit is a systematic evaluation of wage and hour policies and practices and overtime classifications. At a minimum, an audit must review and evaluate exempt and nonexempt job classifications and timekeeping and pay practices and policies, which include assessing regular rate calculations, overtime calculations and the number of hours actually worked by employees. A wage and hour audit reduces the likelihood you will face an FLSA lawsuit because you can remedy problems discovered in an audit before they spiral into a lawsuit.

Finally, the Department should consider revising the method in which it distributes supplemental payments. Future collective bargaining efforts should focus on taking existing lump sum payments and administering such payments as a percentage of wages instead. This would alleviate the logistical nightmare of having to retroactively calculate overtime each time a payment is distributed. This method may cause an increase in overtime costs, however, the savings that would be realized in payroll labor hours and prospective liability would easily justify the additional expenditure.

References

- Acton v. City of Columbia, 436 F.3d 969 (8th Cir. 2006). Retrieved May 18, 2007, from LexisNexis Academic database.
- Aitchison, W. (2005a). *The FLSA: A User's Manual* (4th ed.). Portland, OR: Labor Relations Information Systems.
- Aitchison, W. (2005b). *The Rights of Firefighters* (3rd ed.). Portland, OR: Labor Relations Information Systems.
- Barrentine v. Arkansas Best Freight System, 450 U.S. 728 (1981). Retrieved May 18, 2007, from LexisNexis Academic database.
- Berlin, S. (2006). *Managing Overtime Under the FLSA*. Eau Claire, WI: Lorman Education Services.
- Bryant, K. (1999). *Images of America : Prince George's County, Maryland*. Mount Pleasant, SC: Arcadia Publishing.
- Collective Bargaining Agreement made by and Between Prince George's County Maryland and the International Association of Fire Fighters Local No. 1619 (CBA). Prince George's County Code § 16-233(f) (1) (2006).
- Department of Labor. (n.d.). FLSA Overtime Calculator Advisor. Retrieved June 25, 2007, from <http://www.dol.gov/elaws/otcalculator.htm>
- Department of Labor. (2005). *Wage and Hour Division Opinion Letter FLSA2005-15NA*. Retrieved June 8, 2007, from http://www.dol.gov/esa/whd/opinion/FLSANA/2005/2005_11_29_15NA_FLSA.pdf
- Duff, J. (2007). *Director's Annual Report for 2006*. Washington, D.C: Administrative Office of the U.S. Courts.

- Interstate Brands Corporation v. Reich, 516 U.S. 1042 (1995). Retrieved May 20, 2007, from LexisNexis Academic database.
- Fair Labor Standards Act of 1938 (As Amended), 29 U.S.C. § 201 (2004). Retrieved May 5, 2007, from <http://www.dol.gov/esa/whd/flsa>
- Felton-O'Brien, M. (2007, June 16). FLSA Lawsuits Double [Electronic version]. *Human Resource Executive*, 5(8). Retrieved June 18, 2007, from <http://www.hreonline.com/HRE/story.jsp?storyId=15188876>
- Featsent v City of Youngstown, 859 F. Supp. 1134 (N.D. Ohio, 1993). Retrieved May 23, 2007, from LexisNexis Academic database.
- Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). Retrieved April 10, 2007, from LexisNexis Academic database.
- Goff, J. (2006, October). Pain-and-a-Half: What's Behind the Startling Rise in Overtime Lawsuits? *CFO Magazine*. Retrieved June 30, 2007, from http://www.cfo.com/article.cfm/7960793/c_7988452
- Herzberg, F., Mausner, B., & Snyderman, B. B. (1959). *The Motivation to Work* (2nd ed.). New York: John Wiley & Sons.
- Krakeel, J. (1999, May). Plan Ahead to Protect Against FLSA-Based Lawsuits. *Fire Chief*, 43(5), 25-28.
- Lee, R. (1996). Federalism, Separation of Powers, and the Legacy of Garcia. *Bringham Young University Law Review*, 1996(2), 329-349. Retrieved July 15, 2007, from Business Source Premier database.
- Lockwood v. Prince George's County, 217 F.3d 839 (4th Cir. 2000). Retrieved May 18, 2007, from LexisNexis Academic database.

- Martin, A. (2007, May 18). Company-Killer Lawsuits Can Often Be Avoided. *Atlanta Business Chronicle*. Retrieved June 18, 2007, from <http://atlanta.bizjournals.com/atlanta/stories/2007/05/21/focus9.html>
- Mathis, R. L., & Jackson, J. H. (2005). *Human Resource Management* (11th ed.). Mason, OH: South Western Publishing Company.
- Murphy, M., & Waterfill, M. (2006). *Understanding the Fair Labor Standards Act*. Bloomington, IN: Authorhouse.
- National Fire Academy. (2005, October). EFOP Applied Research Self-Study Guide. Emmitsburg, MD: Author.
- Overtime Compensation, 29 C.F.R. § 778 (2004).
- Pollack, J. (2001, April). Overtime: Determining an Employee's Regular Rate. *The CPA Journal*, 71(4), 50-51.
- Prince George's County Fire & EMS Department. (2004). *Fiscal Affairs Time Sheet Manual*. Largo, MD: Author.
- Prince George's County Fire & EMS Department. (2005). *A History of the Fire Service in Prince George's County, Maryland: 1742-Present*. Largo, MD: Author.
- Rank, S. (2005). Between a Rock and a Hard Place: Self-Audits Under the Fair Labor Standards Act. *Benefits & Compensation Solutions*, 2(10), 22-23. Retrieved July 15, 2007, from Business Source Premier database.
- Rukavina, J. (1999, March). Recent Decision Leaves FLSA Situation Still at Sea. *Fire Chief*, 43(3), 22-23.
- Rukavina, J. (2000, March). Latest FLSA Ruling Takes an Unexpected Twist. *Fire Chief*, 44(3), 37-38.

- Rukavina, J. (2004, July). FLSA Revisions Raise Exemption Questions. *Fire Chief*, 48(7), 24-26.
- Schleifer, J. (2006, August 3). DOL Declares FLSA War! Here's How to Stay Out of the Line of Fire. *HR Daily Advisor*. Retrieved June 17, 2007, from http://hrdailyadvisor.blr.com/archive/2006/08/03/FLSA_overtime_Fair_Labor_Standards_Act_self_audit_book.aspx
- Seyfarth-Shaw LLP. (2004). *Understanding the Federal Wage & Hour Laws: What Employers Must Know about the FLSA and its Overtime Regulations*. Alexandria, VA: Society for Human Resource Management.
- Thrower, D.K. (2003, August). *What is the Impact of the Federal Labor Standards Act on the McPherson Fire Department?* Emmitsburg, MD: National Fire Academy.
- U.S. Department of Labor. (n.d.). *Fact Sheet # 8: Police and Fire Fighters under the Fair Labor Standards Act (FLSA)*. Retrieved May 5, 2007, from <http://www.dol.gov/esa/regs/compliance/whd/whdfs8.htm>
- U.S. Department of Labor. (n.d.). *Fact Sheet # 23: Overtime Pay Requirements of the Fair Labor Standards Act (FLSA)*. Retrieved May 5, 2007, from <http://www.dol.gov/esa/regs/compliance/whd/whdfs23.htm>
- U.S. Department of Labor. (2006). *Fact Sheet # 62U: What is the Wage and Hour Division's Enforcement Authority?* Retrieved May 5, 2007, from <http://www.dol.gov/esa/regs/compliance/whd/FactSheet62/whdfs62U.htm>
- Wheeler v. Hampton Township, 399 F.3d 238 (3d Cir. 2005). Retrieved June 18, 2007, from LexisNexis Academic database.

Appendix A

Section 7(k): Maximum Hours Standards for Work Periods of 7 to 28 Days

Work period (days)	Fire Protection	Law Enforcement
<hr/>		
28.....	212	171
27.....	204	165
26.....	197	159
25.....	189	153
24.....	182	147
23.....	174	141
22.....	167	134
21.....	159	128
20.....	151	122
19.....	144	116
18.....	136	110
17.....	129	104
16.....	121	98
15.....	114	92
14.....	106	86
13.....	98	79
12.....	91	73
11.....	83	67
10.....	76	61
9.....	68	55
8.....	61	49
7.....	53	43

Appendix B

The Statutory Provisions Governing Extra Compensation Overtime

29 U.S.C. 207(e) - This subsection of the Act provides as follows:

As used in this section the “regular rate” at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the

workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days;

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsections:

(a) Where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek;

(b) Section 7(h). This subsection of the Act provides that extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(c) Only the statutory exclusions are authorized. It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

(8) Any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs.

Appendix C

Coefficient Table for Computing Extra Half-Time for Overtime

Coefficient Table for Computing
Extra Half-Time for OvertimeU.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

This table may be used for computing overtime on piecework, bonuses, commissions or fixed salaries for varying hours. Refer to Part 778 of Title 29 of the CFR for guidance regarding when the coefficient method is applicable. This form has been prepared for use by employers who may find the coefficient table to be a timesaver when computing the extra half-time for hours worked over 40 in a workweek.

Hours Even	1/4	1/2	3/4	1/10	2/10	3/10	4/10	6/10	7/10	8/10	9/10
40											
41	0.012	.015	.018	.021	.0134	.0146	.0157	.0169	.0192	.0204	.0215
42	.024	.027	.029	.032	.0249	.0261	.0272	.0283	.0305	.0316	.0327
43	.035	.038	.040	.043	.0360	.0370	.0381	.0392	.0413	.0423	.0434
44	.045	.048	.051	.053	.0465	.0475	.0485	.0495	.0516	.0526	.0536
45	.056	.058	.060	.063	.0565	.0575	.0585	.0595	.0614	.0624	.0633
46	.065	.068	.070	.072	.0662	.0671	.0680	.0690	.0708	.0717	.0726
47	.074	.077	.079	.081	.0754	.0763	.0772	.0781	.0798	.0807	.0816
48	.083	.085	.088	.090	.0842	.0851	.0859	.0868	.0885	.0893	.0902
49	.092	.094	.096	.098	.0927	.0935	.0943	.0951	.0968	.0976	.0984
50	.100	.102	.104	.106	.1008	.1016	.1024	.1032	.1047	.1055	.1063
51	.108	.110	.112	.114	.1086	.1094	.1101	.1109	.1124	.1132	.1139
52	.115	.117	.119	.121	.1161	.1169	.1176	.1183	.1198	.1205	.1212
53	.123	.124	.126	.128	.1234	.1241	.1248	.1255	.1269	.1276	.1283
54	.130	.131	.133	.135	.1303	.1310	.1317	.1324	.1337	.1344	.1350
55	.136	.138	.140	.141	.1370	.1377	.1383	.1390	.1403	.1409	.1416
56	.143	.144	.146	.148	.1435	.1441	.1448	.1454	.1466	.1473	.1479
57	.149	.151	.152	.154	.1497	.1503	.1510	.1516	.1528	.1534	.1540
58	.155	.157	.158	.160	.1558	.1564	.1569	.1575	.1587	.1593	.1599
59	.161	.162	.164	.165	.1616	.1622	.1627	.1633	.1644	.1650	.1656
60	.167	.168	.169	.171	.1672	.1678	.1683	.1689	.1700	.1705	.1711
61	.172	.173	.175	.176	.1727	.1732	.1737	.1743	.1753	.1759	.1764
62	.177	.179	.180	.181	.1779	.1785	.1790	.1795	.1805	.1810	.1815
63	.183	.184	.185	.186	.1830	.1835	.1840	.1845	.1855	.1860	.1865
64	.188	.189	.190	.191	.1880	.1885	.1890	.1894	.1904	.1909	.1914
65	.192	.193	.195	.196	.1928	.1933	.1937	.1942	.1951	.1956	.1960
66	.197	.198	.199	.200	.1974	.1979	.1983	.1988	.1997	.2001	.2006
67	.201	.203	.204	.205	.2019	.2024	.2028	.2033	.2041	.2046	.2050
68	.206	.207	.208	.209	.2063	.2067	.2072	.2076	.2085	.2089	.2093
69	.210	.211	.212	.213	.2106	.2110	.2114	.2118	.2126	.2131	.2135
70	.214	.215	.216	.217	.2147	.2151	.2155	.2159	.2167	.2171	.2175
71	.218	.219	.220	.221	.2187	.2191	.2195	.2199	.2207	.2211	.2214
72	.222	.223	.224	.225	.2226	.2230	.2234	.2238	.2245	.2249	.2253
73	.226	.227	.228	.229	.2264	.2268	.2271	.2275	.2283	.2286	.2290
74	.230	.231	.232	.232	.2301	.2305	.2308	.2312	.2319	.2323	.2326
75	.233	.234	.235	.236	.2337	.2340	.2344	.2347	.2354	.2358	.2361
76	.237	.238	.239	.239	.2372	.2375	.2379	.2382	.2389	.2392	.2396
77	.240	.241	.242	.243	.2406	.2409	.2413	.2416	.2423	.2426	.2429
78	.244	.244	.245	.246	.2439	.2442	.2446	.2449	.2455	.2459	.2462
79	.247	.248	.249	.249	.2472	.2475	.2478	.2481	.2487	.2491	.2494
80	.250	.251	.252	.252	.2503	.2506	.2509	.2512	.2519	.2522	.2525
81	.253	.254	.255	.255	.2534	.2537	.2540	.2543	.2549	.2552	.2555
82	.256	.257	.258	.258	.2564	.2567	.2570	.2573	.2579	.2582	.2585
83	.259	.260	.261	.261	.2593	.2596	.2599	.2602	.2608	.2611	.2613
84	.262	.263	.263	.264	.2622	.2625	.2628	.2630	.2636	.2639	.2642
85	.265	.265	.266	.267	.2650	.2653	.2655	.2658	.2666	.2664	.2669

TO CONVERT INTO WEEKLY EQUIVALENT: Multiply SEMIMONTHLY salary by 0.4615; MONTHLY salary by 0.2308; ANNUAL salary by 0.01923.

TO CONVERT INTO STRAIGHT-TIME HOURLY EQUIVALENT FOR 40 HOURS: Multiply WEEKLY salary by 0.025; SEMIMONTHLY by 0.01154; MONTHLY salary by 0.00577; ANNUAL by 0.00048.

TO CONVERT INTO TIME AND ONE-HALF HOURLY RATE BASED ON 40 HOUR WEEK: Multiply WEEKLY salary by 0.0375; SEMIMONTHLY by 0.0173; MONTHLY salary by 0.00866; ANNUAL by 0.000721.

CAUTION: Be sure straight-time earnings are not below legal minimum.